

LEGISLATIVE BILL 12

Approved by the Governor May 30, 2007

Introduced by Mines, 18; Pahls, 31; Schimek, 27; Cornett, 45

FOR AN ACT relating to the Commercial Dog and Cat Operator Inspection Act; to amend sections 54-628, 54-629, 54-630, 54-631, and 54-632, Reissue Revised Statutes of Nebraska, and sections 54-625, 54-627, and 54-633, Revised Statutes Cumulative Supplement, 2006; to change provisions relating to license requirements, inspections, rules and regulations, applications, disciplinary actions, and enforcement powers; to provide for administrative fines; to provide powers and duties; to harmonize provisions; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 54-625, Revised Statutes Cumulative Supplement, 2006, is amended to read:

54-625 Sections 54-625 to 54-642 and section 9 of this act shall be known and may be cited as the Commercial Dog and Cat Operator Inspection Act.

Sec. 2. Section 54-627, Revised Statutes Cumulative Supplement, 2006, is amended to read:

54-627 (1) ~~Beginning April 1, 2001, a A person shall not operate as a commercial breeder, a dealer, or a boarding kennel, and beginning October 1, 2003, a person shall not operate as an animal control facility, or an animal shelter unless the person obtains the appropriate license as a commercial breeder, dealer, boarding kennel, animal control facility, or animal shelter. Beginning January 1, 2004, a A person shall not operate as a pet shop unless the person obtains a license as a pet shop. A pet shop shall only be subject to the Commercial Dog and Cat Operator Inspection Act and the rules and regulations adopted and promulgated pursuant thereto in any area or areas of the establishment used for the keeping and selling of pet animals.~~

(2) An applicant for a license shall submit an application for the appropriate license to the department, on a form prescribed by the department, together with the annual license fee. Such fee is nonreturnable. ~~Additionally, the department may conduct an inspection of the facilities and sanitation and confinement practices of the applicant or any other practices that may affect the humane treatment of pet animals.~~ Upon receipt of the application and annual license fee and upon completion of a qualifying inspection if required pursuant to section 54-630 for an initial license applicant or if a qualifying inspection is deemed appropriate by the department before a license is issued for any other applicant, the appropriate license may be issued by the department. Such license shall not be transferable to another person or location.

~~(3) The annual license fee shall be according to a fee schedule prepared by the director. The fees shall be based upon the number of animals served by the licensee, and there shall be startup discounts for new licensees. The maximum annual license fee shall not exceed two hundred fifty dollars.~~

(3)(a) Except as otherwise provided in this subsection, the annual license fee shall be determined according to the following fee schedule based upon the daily average number of dogs or cats housed by the licensee over the previous annual licensure period:

- (i) Ten or fewer dogs or cats, one hundred fifty dollars;
- (ii) Eleven to fifty dogs or cats, two hundred dollars; and
- (iii) More than fifty dogs or cats, two hundred fifty dollars.

(b) The initial license fee for any person required to be licensed pursuant to the act shall be one hundred twenty-five dollars.

(c) The annual license fee for a licensee that does not house dogs or cats shall be one hundred fifty dollars.

(d) The fees charged under this subsection may be increased or decreased by the director after a public hearing is held outlining the reason for any proposed change in the fee. The maximum fee shall not exceed three hundred fifty dollars.

(4) A license to operate as a commercial breeder, a license to operate as a dealer, a license to operate as a boarding kennel, or a license to operate as a pet shop shall be renewed by filing with the department at least thirty days prior to April 1 of each year a renewal application and the annual license fee. A license to operate as an animal control facility or animal shelter shall be renewed by filing with the department at least thirty days prior to October 1 of each year a renewal application and the annual

license fee. Failure to renew a license prior to the expiration of the license shall result in an additional fee of twenty dollars required upon application to renew such license.

Sec. 3. Section 54-628, Reissue Revised Statutes of Nebraska, is amended to read:

54-628 The department shall ~~establish an inspection program for applicants and inspect all licensees at least once in a twenty-four-month period~~ to determine whether the ~~standards of care of licensee is in compliance with the Commercial Dog and Cat Operator Inspection Act, are being met. Any additional inspector or other field personnel employed by the department to carry out inspections pursuant to the act that are funded through General Fund appropriations to the Bureau of Animal Industry shall be assigned to the Bureau of Animal Industry and shall be available for temporary reassignment as needed to other activities and functions of the Bureau of Animal Industry in the event of a livestock disease emergency or any other threat to livestock or public health.~~ When an inspection produces evidence of a violation of the act or the rules and regulations of the department, a copy of a written report of the inspection and violations shown thereon, prepared by the inspector, shall be given to the applicant or licensee, together with written notice to comply within the time limit established by the department and set out in such notice. The premises of the applicant or licensee shall be open for inspection. The department and any officer, agent, employee, or appointee of the department shall have the right to enter upon the premises of any person who has, or is suspected of having, any dog or cat thereon or any sanitation, housing, or other condition or practice that is in violation of the act.

Sec. 4. Section 54-629, Reissue Revised Statutes of Nebraska, is amended to read:

54-629 The department shall adopt and promulgate rules and regulations to carry out the Commercial Dog and Cat Operator Inspection Act. The rules and regulations may include, but are not limited to, factors to be considered when the department imposes an administrative fine, provisions governing record-keeping and other requirements for persons required to have a license, and any other matter deemed necessary by the department to carry out the act. The department shall use as a guideline for the humane handling, care, treatment, and transportation of dogs and cats the standards of the Animal and Plant Health Inspection Service of the United States Department of Agriculture as set out in 9 C.F.R. 3.1 to 3.19.

Sec. 5. Section 54-630, Reissue Revised Statutes of Nebraska, is amended to read:

54-630 Before the department approves an application for an initial license, an inspector of the department ~~may~~ shall inspect the operation of the applicant to determine whether the applicant qualifies to hold a license pursuant to the Commercial Dog and Cat Operator Inspection Act. An applicant who qualifies shall be issued a license. An applicant who does not receive a license shall be afforded the opportunity for a hearing before the director or the director's designee to present evidence that the applicant is qualified to hold a license should a license be issued. All such hearings shall be in accordance with the Administrative Procedure Act.

Sec. 6. Section 54-631, Reissue Revised Statutes of Nebraska, is amended to read:

54-631 (1) A licensee under the Commercial Dog and Cat Operator Inspection Act shall comply with the act, the rules and regulations, and any order of the director issued pursuant thereto. The licensee shall not interfere with the department in the performance of its duties.

(2) A licensee may be put on probation requiring such licensee to comply with the conditions set out in an order of probation issued by the director, may be ordered to cease and desist due to a failure to comply, or may be ordered to pay an administrative fine pursuant to section 54-633 after:

(a) The director determines the licensee has not complied with subsection (1) of this section;

(b) The licensee is given written notice to comply and written notice of the right to a hearing to show cause why an order of probation should not be issued; and

(c) The director finds that issuing an order of probation is appropriate based on the hearing record or on the available information if the hearing is waived by the licensee.

(3) A license may be suspended after:

(a) The director determines the licensee has not complied with subsection (1) of this section;

(b) The licensee is given written notice to comply and written notice of the right to a hearing to show cause why the license should not be suspended; and

(c) The director finds that issuing an order suspending the license is appropriate based on the hearing record or on the available information if the hearing is waived by the licensee.

(4) A license may be immediately suspended and the director may order the operation of the licensee closed prior to hearing when:

(a) The director determines that there is a significant threat to the health or safety of the dogs or cats harbored or owned by the licensee; and

(b) The licensee receives written notice to comply and written notice of the right to a hearing to show cause why the suspension should not be sustained. Within fifteen days after the suspension, the licensee may request in writing a date for a hearing, and the director shall consider the interests of the licensee when the director establishes the date and time of the hearing, except that no hearing shall be held sooner than is reasonable under the circumstances. When a licensee does not request a hearing date within the fifteen-day period, the director shall establish a hearing date and notify the licensee of the date and time of such hearing.

(5) A license may be revoked after:

(a) The director determines the licensee has committed serious, repeated, or multiple violations of any of the requirements of subsection (1) of this section;

(b) The licensee is given written notice to comply and written notice of the right to a hearing to show cause why the license should not be revoked; and

(c) The director finds that issuing an order revoking the license is appropriate based on the hearing record or on the available information if the hearing is waived by the licensee.

(6) The operation of any licensee which has been suspended shall close and remain closed until the license is reinstated. Any operation for which the license has been revoked shall close and remain closed until a new license is issued.

(7) The director may terminate proceedings ~~to suspend or revoke a license or subject a licensee to an order of probation~~ undertaken pursuant to this section at any time if the reasons for such proceedings no longer exist. A license which has been suspended may be reinstated, a person with a revoked license may be issued a new license, or a licensee may no longer be subject to an order of probation if the director determines the conditions which prompted the suspension, revocation, or probation no longer exist.

(8) Proceedings ~~for suspension, revocation, or probation~~ undertaken pursuant to this section shall not preclude the department from seeking other civil or criminal actions.

Sec. 7. Section 54-632, Reissue Revised Statutes of Nebraska, is amended to read:

54-632 (1) Any notice or order provided for in the Commercial Dog and Cat Operator Inspection Act shall be properly served when it is personally served on the licensee or on the person authorized by the licensee to receive notices and orders of the department or when it is sent by certified or registered mail, return receipt requested, to the last-known address of the licensee or the person authorized by the licensee to receive such notices and orders. A copy of the notice and the order shall be filed in the records of the department.

(2) A notice to comply with the conditions set out in the order of the director provided in section 54-631 shall set forth the acts or omissions with which the licensee is charged.

(3) A notice of the licensee's right to a hearing provided for in sections 54-630 and 54-631 shall set forth the time and place of the hearing except as otherwise provided in section 54-631. A notice of the licensee's right to such hearing shall include notice that such right to a hearing may be waived pursuant to subsection (5) of this section. A notice of the licensee's right to a hearing ~~to show cause why the license shall not be revoked~~ shall include notice to the licensee that the license may be ~~revoked or suspended,~~ that the licensee may be subject to an order of probation, ~~or that the license may be suspended and the licensee subject to an order of probation,~~ if the director determines such action is more appropriate. A notice of the licensee's right to a hearing ~~to show cause why the license should not be suspended~~ shall include notice to the licensee that the license may be suspended or that the licensee may also be subject to an order of probation if the director determines such action is more appropriate. subject to sanctions as provided in section 54-631.

(4) The hearings provided for in the act shall be conducted by the director at the time and place he or she designates. The director shall make a final finding based on the complete hearing record and issue an order. If the

director has suspended a license pursuant to subsection (4) of section 54-631, the director shall sustain, modify, or rescind the order after the hearing. All hearings shall be in accordance with the Administrative Procedure Act.

(5) A licensee waives the right to a hearing if such licensee does not attend the hearing at the time and place set forth in the notice described in subsection (3) of this section, without requesting the director at least two days before the designated time to change the time and place for the hearing, except that before an order of the director becomes final, the director may designate a different time and place for the hearing if the licensee shows the director that the licensee had a justifiable reason for not attending the hearing and not timely requesting a change of the time and place for such hearing. If the licensee waives the right to a hearing, the director shall make a final finding based upon the available information and issue an order. If the director has suspended a license pursuant to subsection (4) of section 54-631, the director may sustain, modify, or rescind the order after the hearing.

(6) Any person aggrieved by the finding of the director has ten days after the entry of the director's order to request a new hearing if such person can show that a mistake of fact has been made which affected the director's determination. Any order of the director becomes final upon the expiration of ten days after its entry if no request for a new hearing is made.

Sec. 8. Section 54-633, Revised Statutes Cumulative Supplement, 2006, is amended to read:

54-633 (1) In order to ensure compliance with the Commercial Dog and Cat Operator Inspection Act, the department may apply for a restraining order, temporary or permanent injunction, or mandatory injunction against any person violating or threatening to violate the act, the rules and regulations, or any order of the director issued pursuant thereto. The district court of the county where the violation is occurring or is about to occur shall have jurisdiction to grant relief upon good cause shown. Relief may be granted notwithstanding the existence of any other remedy at law and shall be granted without bond.

The county attorney of the county in which such violations are occurring or about to occur shall, when notified of such violation or threatened violation, cause appropriate proceedings under this section to be instituted and pursued without delay.

(2) If alleged violations of the Commercial Dog and Cat Operator Inspection Act, the rules and regulations, or an order of the director or an offense against animals observed by an inspector in the course of performing an inspection under the act poses a significant threat to the health or safety of the dogs or cats harbored or owned by an applicant or licensee, the department may direct an inspector to impound the dogs or cats pursuant to sections 28-1011 and 28-1012 or may request any other law enforcement officer as defined in section 28-1008 to impound the dogs or cats pursuant to sections 28-1011 and 28-1012. The department shall cooperate and coordinate with law enforcement agencies, political subdivisions, animal shelters, humane societies, and other appropriate entities, public or private, to provide for the care, shelter, and disposition of animals impounded by the department pursuant to this section.

(3) The department may impose an administrative fine of not more than five thousand dollars for any violation of the act or the rules and regulations adopted and promulgated under the act. Each violation of the act or such rules and regulations shall constitute a separate offense for purposes of this subsection.

Sec. 9. (1) All money collected by the department pursuant to section 54-633 shall be remitted to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

(2) Any administrative fine levied pursuant to section 54-633 which remains unpaid for more than sixty days shall constitute a debt to the State of Nebraska which may be collected in the manner of a lien foreclosure or sued for and recovered in a proper form of action in the name of the state in the district court of the county in which the violator resides or owns property.

Sec. 10. Original sections 54-628, 54-629, 54-630, 54-631, and 54-632, Reissue Revised Statutes of Nebraska, and sections 54-625, 54-627, and 54-633, Revised Statutes Cumulative Supplement, 2006, are repealed.